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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

(**HONORABLE JANIS L. SAMMARTINO**)

UNITED STATES OF AMERICA, Plaintiff, v. JUAN CARLOS LOPEZ-ZARAGOZA, Defendant.	CASE NOS. 08CR1277-JLS STATEMENT OF FACTS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S MOTIONS.

I.

STATEMENT OF FACTS

On April 23, 2008, a Grand Jury indicted Mr. Lopez with seven counts of violations of 8 U.S.C. §§ 1324(a)(2)(B)(ii) and (iii), and 18 U.S.C. § 2 involving the smuggling of an alien into the United States for financial gain and aiding and abetting.

II.

MOTION TO COMPEL SPECIFIC DISCOVERY

Mr. Lopez moves for the disclosure of the following discovery. This request includes discovery of which the government attorney knows, and discovery of which the government attorney may become aware through the exercise of due diligence. See Fed. R. Crim. P. 16.

(1) The Defendant's Statements. The defendant requests all oral, written, or recorded statements made by her, including any statements contained in the handwritten notes of any government agent, and any response she made to any Miranda warnings that government agents may have read to her. Fed. R. Crim. P. 16(a)(1)(A); Fed. R. Crim. P. 16(a)(1)(B).

(2) Arrest Reports, Notes, Dispatch Tapes. The defendant requests all arrest reports, notes, dispatch tapes, and any other materials that relate to the circumstances surrounding her arrest and interrogation. This request includes, but is not limited to, rough notes, records, reports, transcripts, or other documents which contain statements of the defendant or any other discoverable material. Fed. R. Crim. P. 16(a)(1)(A); Fed. R. Crim. P. 16(a)(1)(B); Brady v. Maryland, 373 U.S. 83 (1963). The government must disclose arrest reports, investigator's notes, memoranda from arresting officers, dispatch tapes, sworn statements, and prosecution reports pertaining to the defendant. Fed. R. Crim. P. 16(a)(1)(B).

(3) The Defendant's Prior Record. The defendant requests disclosure of her prior record. Fed. R. Crim. P. 16(a)(1)(D).

(4) Evidence Seized. The defendant requests disclosure of evidence seized as a result of any search, whether warrantless or with a warrant. Fed. R. Crim. P. 16(a)(1)(E).

(5) Tangible Objects. The defendant requests the opportunity to inspect, copy, or test all documents and tangible objects, including photographs, books, papers, documents, alleged controlled substances, fingerprint analyses, vehicles, or copies of portions thereof, which are material to the defense, intended for use in the government's case, or were obtained from or belong to the defendant. Fed. R. Crim. P. 16(a)(1)(E).

(6) Request for Preservation of Evidence. The defendant requests preservation of all physical evidence, including dispatch tapes, that the government or its agents may destroy, lose, or otherwise fail to preserve, and which relates to the arrest or the events leading to the arrest in this case. This request includes, but is not limited to, the results of any fingerprint analyses, the

defendant's personal effects, and any other evidence seized from the defendant, or any third party. This request also encompasses a request to preserve for questioning all the people from the car in which defendant was driving. The defendant requests that the Court order at the time of the motions hearing that the government preserve all evidence to avoid a future status conference regarding that evidence.

(7) Reports Of Examinations And Tests. The defendant requests the opportunity to inspect and copy any reports of physical or mental examinations, and any scientific tests, which are material to the defense, or intended for use in the government's case. Fed. R. Crim. P. 16(a)(1)(F).

(8) Expert Witnesses. The defendant requests the name, qualifications, and a written summary of the testimony of any person that the government intends to call as an expert witness during its case. Fed. R. Crim. P. 16(a)(1)(G). Mr. Lopez requests that the Court order disclosure of this discovery at least four weeks prior to trial in order to investigate it, to prepare in limine motions in a timely manner, and to prepare adequately for trial.

(9) Brady Material. The defendant requests all documents, statements, reports, and tangible evidence favorable to the defendant on the issue of guilt, which affects the credibility of the government's case, or which may result in a lower sentence under the United States Sentencing Guidelines and/or 18 U.S.C. § 3552. Brady v. Maryland, 373 U.S. 83 (1963). Under Brady, impeachment as well as exculpatory evidence falls within the definition of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97 (1976).

(10) Giglio Information. The defendant requests all statements and/or promises, express or implied, made to any government witness in exchange for their testimony in this case, and all other information which could arguably impeach any government witness. Giglio v. United States, 405 U.S. 150 (1972).

(11) Henthorn Material. The defendant requests that the government examine the personnel files of all government agents who may testify in this action for Brady material. United States v. Herring, 83 F.3d 1120 (9th Cir. 1996).

(12) Informants And Cooperating Witnesses. The defendant requests the name, address, and location of any informants or cooperating witnesses the government used or will use in this case, and in particular, the name, address, and location of any informant who was a percipient witness in this case, or who otherwise participated in the crime charged against Mr. Lopez. Roviaro v. United States, 353 U.S. 52, 61-62 (1957). The government must disclose any information derived from informants which exculpates, or tends to exculpate, the defendant. Brady v. Maryland, 373 U.S. 83 (1963). The government must also disclose any information indicating bias on the part of any informant or cooperating witness. Id.

(13) Jencks Act Material. The defendant requests, at least four weeks in advance of trial, all material, including dispatch tapes, which the government must produce pursuant to 18 U.S.C. § 3500. Advance production will avoid the possibility of delay at the request of defendant to investigate the Jencks material. Disclosure of this discovery at least four weeks prior to trial will also enable Mr. Lopez to prepare in limine motions in a timely manner and to prepare adequately for trial.

(14) Any Proposed 404(b) Evidence. The defendant requests prior notice of any "other acts" that the government intends to introduce in its case-in-chief, through impeachment, or in its rebuttal case. Fed. R. Evid. 404(b); Fed. R. Evid. 609; United States v. Vega, 188 F.3d 1150 (9th Cir. 1999). Mr. Lopez requests that the Court order disclosure of this discovery at least four weeks prior to trial in order to investigate the "acts," to prepare in limine motions, and to adequately prepare for trial.

(15) Residual Request. Mr. Lopez intends by this discovery motion to invoke her rights to discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the Constitution and laws of the United States. Mr. Lopez requests that the government provide her with the above requested material sufficiently in advance of trial to avoid unnecessary delay prior to cross-examination.

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III

LEAVE TO FILE FURTHER MOTIONS

Mr. Lopez has received 147 pages of discovery in this case. As new information surfaces due to the government providing discovery in response to these motions or an order of this court, or through defense investigation, the defense may find it necessary to file further motions, or to supplement existing motions with additional facts. Therefore, defense counsel requests the opportunity to file further motions based upon information gained from discovery.

IV.

CONCLUSION

For the reasons stated, Mr. Lopez requests that this Court grant his motions.

Respectfully submitted,

/s/ Stephen D. Demik

Dated: May 22, 2008

STEPHEN D. DEMIK
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